

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

ROBERT DRAKE EWBANK,

Plaintiff,

Case No. 6:17-cv-00187-MK

OPINION AND ORDER

vs.

JEFF W. EMRICK *et al.*,

Defendants.

KASUBHAI, United States Magistrate Judge:

Plaintiff R. Drake Ewbank (“Plaintiff”) filed this action against Defendants in 2017, alleging multiple claims including violations of the Americans with Disabilities Act (“ADA”). On August 11, 2023, this Court issued an Opinion and Order (ECF No. 187) granting Defendants’ motion for summary judgment (ECF No. 153) in part but denying the motion with respect to Plaintiff’s retaliation claim under Title V of the ADA. On August 15, 2023,

Defendants filed a motion for clarification and in the alternative moved for reconsideration of the Court's Order. ECF No. 198. For the reasons below, Defendants' motion is granted.

In his Sixth Amended Complaint, Plaintiff brought a claim of retaliation under Title V of the ADA. ECF No. 75-1. On October 15, 2018, this Court issued a Judgment that dismissed all of Plaintiff's claims, including his Title V claim, with prejudice. ECF No. 85. Plaintiff subsequently appealed part of that Judgment to the Ninth Circuit. ECF No. 86. On July 13, 2021, the Ninth Circuit reversed and remanded the Judgment with respect to Plaintiff's claim under Title II of the ADA. ECF No. 93.

On February 1, 2022, Plaintiff filed a Seventh Amended Complaint ("SAC"). ECF No. 116. The SAC realleges a claim of retaliation under Title V of the ADA. *Id.* This claim was dismissed with prejudice by this Court and was not subject to the Ninth Circuit's remand order. *See* ECF No. 93 (limiting reversal and remand of the Court's Judgment to Plaintiff's ADA Title II claim only). The Title V claim is barred by claim preclusion. *See Amadeo v. Principal Mut. Life Ins. Co.*, 290 F.3d 1152, 1159 (9th Cir. 2002) (claim preclusion bars "successive litigation of the very same claim" following a final adjudication on the merits involving the same parties or their privies). For these reasons, Defendants' Motion for Reconsideration (ECF No. 198) is GRANTED and the Opinion and Order (ECF No. 187) is amended as follows: Defendants' motion for summary judgment (ECF No. 153) is GRANTED. This action is dismissed.

IT IS SO ORDERED.

DATED this 29th day of August 2023.

s/ Mustafa T. Kasubhai
MUSTAFA T. KASUBHAI (He / Him)
United States Magistrate Judge